United States Court of Appeals

for the Second Circuit

APPENDIX

75-1027

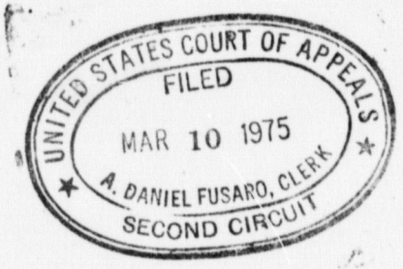
To be argued by
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee, -against- ANTHONY TAVOULARIS, VINCENT POERIO, and LOUIS DANIELS, Appellants.	Docket No. 75-1027

APPENDIX TO THE BRIEF
FOR APPELLANT DANIELS

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
LOUIS DANIELS
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
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SHEILA GINSBERG,
Of Counsel

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D. C. Form No. 100

CRIMINAL DOCKET

74 CR 173 PLATT, J. 71 CR 40

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. ANTHONY TAVOULARIS VINCENT POERIO LOUIS DANIELS	For U.S.: Weintraub Clerk For Defendant: (POERIO) court assigned counsel Martin Light 66 Court St., Bklyn, NY 834-0888

Did conspire to dispose of US Treas.bills which had been taken from Morgan Guaranty Trust Co.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine, TAVOULARIS	10,000.00	1-11-75	Bond of Deft Tavoularis	5 —	
Clerk,		1-20-75	[illegible]		5
Marshal,		1/17/75	Notice of appeal(No Fee)		
Attorney,			(DANIELS)		
Commissioner's Court,		2/24/75	Notice of appeal(No Fee)		
Witnesses,			(POERIO)		

DATE	PROCEEDINGS
3-6-74	Before MISHLER, CH.J.- Indictment filed and ordered sealed- Bench warr ordered as to deft #3
3-18-74	Before TRAVIA J - case called - sealed indictment ordered opened - deft TAVOULARIS & counsel Gustave Newman present - deft arraigned & waives reading of Indictment and enters a plea of not guilty - bail continued and case adjd to May 3, 1974 for status report.
4-1-74	Petition for writ of habeas corpus ad prosequendum filed (POERIO)
4-1-74	By TRAVIA,J.- Writ issued ret. 4-2-74 (POERIO)
4-19-74	Before TRAVIA J - case called - deft POERIO present without counsel - deft waives reading of Indictment and the court enters a plea of not guilty - case adjd to 4-24-74 at 4:00 PM for appointment of counsel.
4-24-74	By TRAVIA J - Order appointing counsel filed for deft POERIO.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
4-24-74	Before TRAVIA J - case called - deft POERIO present - court assigns Martin Light as counsel for the deft - 30 days for motions is granted.		
5-3-74	Before TRAVIA J - case called - respectfully referred to Judge Platt.		
5-7-74	Before WEINSTEIN,J.- Case called- Deft and counsel Joanna Seybert of Leg Aid present-Deft arraigned and enters a plea of not guilty-Bail set at $10.000.00 P.S.B.- secured by defts signature, his mother's signature and mother's house (LOUIS DANIELS)		
5-13-74	Magistrate's file 74 M 687 inserted into CR file.		
6-14-74	Before PLATT, J - case called - set for trial on Sept. 9, 1974		
6-19-74	Notice of Readiness for Trial filed		
8-14-74	Complaint filed re deft Joseph A De Riemo (prepared by Charles Weintraub, Special Atty, U.S. Dept. of Justice (placed in criminal file 74 CR 173 relates)		
8-30-74	Petitionfor writ of habeas corpus ad prosequendum filed (POERIO)		
8-30-74	By PLATT,J.- Writ issued, ret. 9-9-74 (POERIO)		
9/4/74	Before PLATT,J.- Case called- Motion granted on Stip. -Adjd to 9/20/74 for trial		
9-20-74	Petitions for writs of habeas corpus ad prosequendum filed(V. POERIO)		
9-20-74	By PLATT,J.- writs issued, ret. 10-7-74 (V. POERIO)		
9-20-74	Before PLATT,J.- Case called- Adjd to 10-7-74 for trial		
10-8-74	Writ returned and filed - Executed as to deft V.POERIO.		
~~10-8-74~~	~~Writ returned and filed - Executed as to deft V.POERIO.~~		
10-10-74	Govts Memorandum filed on divulging witness' addresses and employment.		
10-22-74	Govts Trial Brief filed.		
10/24/74	Before PLATT,J.- Case called- Defts ANTHONY TAVOULARIS and V. POERIO and L. DANIELS and counsels present Trial ordered and begun- Deft POERIO'S motion to dismiss- denied- Jurors selected and sworn- Trial contd to 10/25/74		
10-25-74	Before Platt, J - case called - trial resumed - hearing held and concluded - motion denied - trial ~~with~~ contd to Oct. 29, 1974.		
10/29/74	BeforePLATT,J.- Case called- Defts and counsel present- Trial resumed Each deft moves for mistrial- No opposition- motion granted on consent Trial concluded- New trial set down for 11/15/74- Jury discharged		
10/30/74	Stenographers Transcrips dated 10/29/74 and 10/24/74 filed		
11/1/74	Govt's reply brief filed		
11-4-74	Voucher for Expert Services filed (Bierlo)		
11-4-74	Before PLATT, J - case called - Trial ordered and BEGUN - Jurors selected and sworn - Trial contd to Nov. 6, 1974.		
11/6/74	Before PLATT,J -C.C.-Trial resumed-Trial contd to 11/7/74		

CRIMINAL DOCKET 74CR173

DATE	PROCEEDINGS
11/7/74	Before PLATT,J.- Case called- Trial resumed- Trial contd to 11/11/74
11-8-74	Govts Request to Charge filed.
11-11-74	Before PLATT, J - case called - defts& counsels present - trial resumed - Deft TAVOULARIS motion to dismiss and for a directed verdict - deft PIERIO motion for a directed verdict; deft DANIELS motion for a directed verdict and to dismiss - motions denied - Trial contd to Nov. 12, 1974.
11/12/74	Before PLATT,J.- Case called- defts and counsel present- Trial resume Defts renew all motions previously made-motions denied-Trial contd 11/13/74
11-13-74	Before PLATT, J - case called - Trial resumed - court charges Jury - Requests to Charge - Marshals sworn - alternates discharged- Jury retires to deliberate at 11:20 AM - trial contd to 11-14-74.
11-13-74	By Platt, J - Order of sustenance filed (Luncheon)
11-14-74	Before PLATT, J - case called - defts & counsels present - Trial resumed - Jury resumes deliberations - Jury returns with a verdict of guilty as to all 3 defts on each of counts 1 & 2 - Jury polled - Jury discharged - Trial concluded.
11-14-74	By Platt, J 2 Orders of Sustenance filed (Lunch and Coffee)
11/14/74 12-3-74	Stenographers Transcript 10/25/74, 11/4/74, 11/6/74 and 11/11/74 filed 4 stenographers transcripts filed, dated Nov. 7, Nov. 12, Nov. 13 and Nov. 14, 1974, respectively.
12/5/74	Voucher for Expert Services filed (DANIELS)
12/5/74	Voucher for Expert Serviees filed. (DANIELS)
1/17/75	Before PLATT,J.- Case called- Defts and counsels present- Deft TAVOU sentenced on count 1 to imprisonment for a period of 5 years pursuant T-18 U.S.C. Sec. 4208(a)(2) and fined $5,000.00- and imprisonment for a period of 5 years on count 2 pursuant to T-18, U.S.C. Sec. 4208(a)(and fined $5,000.00- Sentence of imprisonment on count 2 to be served concurrently with sentence of imprisonment under count 1- Deft DANIELS sentenced on count 1 to imprisonment for a period of years pursuant to T-18, U.S.C. Sec. 4208(a)(2) and imprisonment on count 2 a period of 3 years pursuant to T-18, U.S.C. Sec. 4208(a)(2) said sen to run concurrently with sentence of imprisonment in count 1-
1/17/75	Judgment and Commitment filed- certified copies to Marshal (DANIELS)
1/17/75	Judgment and Commitment filed- certified copies to Marshal (TAVOULARI

DATE	PROCEEDINGS
1/17/75	Notice of appeal filed (TAVOULARIS)
1/17/75	Docket entries and duplicate of notice of appeal mailed to court of appeal
/17/75	Notice of appeal filed (DANIELS) (without fee)
/17/75	Docket entries and duplicate of notice of appeal mailed to court of appea
1/24/75	Before PLATT,J.- Case called- Deft POERIO and counsel present- Deft renews all motions previously made- denied- Deft sentenced to imprisonment on counts 1 and 2 for a period of 5 years pursuant to T-18, U.S.C. Sec. 4208(a)(2) sentences in count 1 and 2 to run concurrently- and consecutiv with sentence imposed in 71CR1269- Clerk to file notice of appeal
1/24/75	Judgment and Commitment filed- certified copies to Marshal(POERIO)
1/24/75	Notice of appeal without fee filed(POERIO)
1/24/75	Docket entries and duplicate of notice of appeal mailed to court of appea
1-24-75	Before PLATT, J - case called - Motion to exonerate bail as to deft DANIELS - motion granted - bail exonerated - deft to surrender to the U.S. Marshal.
1/27/75	Certified copy of Judgment and Commitment retd and filed- deft delivered to Federal Detention Headquarters (DANIELS)
1-30-75	Order received from the Court of Appeals filed that the Index to Record be docketed on or before Feb. 7, 1975 (defts DANIELS, TAVOULARIS and POERIO)
1/30/75	Record on appeal certified and handed to Joan Gill for delivery to c of

A TRUE COPY
ATTEST
DATED 19
LEWIS ORGEL,
BY
DEPUTY

----------X

UNITED STATES OF AMERICA

v.

ANTHONY TAVOULARIS
VINCENT POERIO
LOUIS DANIELS

DEFENDANTS

----------X

SUPERSEDING
INDICTMENT

74CR 173

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 14th day of October, 1969 and the 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels, (and Joseph DeRienzo, Stewart Norman and Melvin Berman, named herein as co-conspirators but not as defendants)and others to the Grand Jury unknown, wilfully and knowingly conspired and agreed to commit offenses against the United States in violation of Title 18, United States Code, Section 2113(c), by wilfully and knowingly conspiring and agreeing to possess, conceal, sell and dispose of United States Treasury bills, valued in excess of one hundred dollars ($100.00) including but not limited to a United States Treasury bill in the face amount of One Hundred Thousand Dollars ($100,000) bearing serial number 1017965A which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody, control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels, knowing the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113 (b).

2. It was a part of said conspiracy that the defendant Vincent Poerio and the defendant Louis Daniels would offer to sell Treasury bills valued in excess of two million dollars to co-conspirators Stewart Norman and Melvin Berman.

3. It was further a part of said conspiracy that co-conspirators Stewart Norman and Melvin Berman would attempt to sell said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DeRienzo.

4. It was further a part of said conspiracy that the defendant Anthony Tavoularis and co-conspirator Joseph DeRienzo would attempt to find a buyer for said Treasury bills.

5. It was further a part of said conspiracy that the defendant Vincent Poerio would supply a sample Treasury bill to co-conspirator Stewart Norman.

6. It was further a part of said conspiracy that said sample Treasury bill would be passed from co-conspirator Stewart Norman through co-conspirator Melvin Berman to the defendant Anthony Tavoularis

7. It was further a part of said conspiracy that the defendant Anthony Tavoularis would deliver said sample Treasury bill to co-conspirator Joseph DeRienzo.

8. It was further a part of said conspiracy that the defendant Vincent Poerio would deliver Treasury bills valued in excess of two million dollars to co-conspirator Stewart Norman.

9. It was further a part of said conspiracy that co-conspirator Stewart Norman would deliver said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DeRienzo at Frank's Luncheonette, 1766 East New York Avenue, Brooklyn, New York.

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed the following:

OVERT ACTS

1. On or about February 27, 1970, in the Eastern District of New York, Anthony Tavoularis and Joseph DeRienzo had a conversation.

2. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis and Joseph DeRienzo met at 1766 East New York Avenue, in Brooklyn.

3. On or about February 28, 1970, within the Eastern District of New York, Vincent Poerio and Stewart Norman had a meeting.

4. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis, Melvin Berman and Stewart Norman had a meeting.

5. On or about March 4, 1970, within the Eastern District of New York, Vincent Poerio and Stewart Norman had a meeting.

6. On or about March 4, 1970, within the Eastern District of New York, Anthony Tavoularis, Stewart Norman and Joseph DeRienzo met at 1766 East New York Avenue, in Brooklyn.

[Title 18, United States Code, Section 371]

COUNT TWO

On or about and between the 27th day of February, 1970 and the 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio and the defendant Louis Daniels, did wilfully, unlawfully and knowingly possess United States Treasury Bills, valued in excess of one hundred dollars ($100.00), including but not limited to a United States Treasury bill in the face amount of One Hundred Thousand Dollars($100,000) bearing serial number 1017965A, which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody and control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis and the defendant Vincent Poerio and the defendant Louis Daniels, knowing that the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113 (b).

[Title 18, United States Code, Section 2113 (c)& 2].

A TRUE BILL

FOREMAN

Edward V. Boyd, II by CW

UNITED STATES ATTORNEY

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other considerations not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at

a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "not guilty" pleas of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice or public opinion. Both of the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

I am not sending the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled, however, to see any or all of the exhibits as you consider your verdict. I suggest that you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note to me through one of the Deputy Marshals.

The law presumes the defendants to be innocent of crime. Thus, a defendant, although accused, begins the trial with a "clean slate" -- with no evidence

against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon the defendants in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from a natural sympathy which we all have for others. It is not necessary for the Government to prove the guilt of the defendants beyond all possible doubt. Because if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any contraverted

fact which, by its nature, is not susceptible of mathematical certainty. In consequence, the law says that a doubt should be a reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

Again, a reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence -- such as the testimony of an eye-witness. The other is circumstantial evidence -- the proof of facts and circumstances which rationally

implied the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind. Thus, the footprints of a man in the sand implied to Robinson Crusoe that there was another man with him on the desert island, and indeed there was, the man Friday. Thus, on the one hand you may have direct evidence of the issue and on the other hand you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt both on the direct and circumstantial evidence.

At times the jury might feel that circumstantial evidence is of better quality. At other times they may feel direct evidence is of better quality. That judgment is left entirely to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Now, on the indictment, it is charged in Count One of the indictment -- and I am going to read the

entire indictment to you and discuss the individual counts separately.

It is charged in Count One of the indictment that on or about and between the 14th day of October 1969 and the 4th day of March 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis daniels, and one Joseph DiRienzo, Stuart Norman and Melvin Berman, named herein as co-conspirators but not as defendants, and others to the Grand Jury unknown, wilfully and knowingly conspired and agreed to commit offenses against the United States in violation of Title 18, United States Code, Section 2113(c), by wilfully and knowingly conspiring and agreeing to possess, conceal, sell and dispose of United States Treasury bills, valued in excess of $100, including but not limited to a United States Treasury bill in the face amount of $100,000, bearing serial number 1017965A which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in

the care, custody, control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis, the defendant Vincent Poerio, and the defendant Louis Daniels, knowing the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113(b).

It was a part of said conspiracy that the defendant Vincent Poerio and the defendant Louis Daniels would offer to sell Treasury bills valued in excess of two million dollars to co-conspirators Stuart Norman and Melvin Berman.

It was further a part of said conspiracy that co-conspirator Stuart Norman and Melvin Berman would attempt to sell said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DiRienzo.

It was further a part of said conspiracy that the defendant Anthony Tavoularis and co-conspirator Joseph DiRienzo would attempt to find a buyer for said Treasury bills.

It was further a part of said conspiracy that the defendant Vincent Poerio would supply a sample Treasury bill to co-conspirator Stuart Norman.

It was further a part of said conspiracy that said sample Treasury bill would be passed from co-conspirator Stuart Norman through co-conspirator Melvin Berman to the defendant Anthony Tavoularis.

It was further a part of said conspiracy that the defendant Anthony Tavoularis would deliver said sample Treasury bill to co-conspirator Joseph DiRienzo.

It was further a part of said conspiracy that the defendant Vincent Poerio would deliver Treasury bills valued in excess of two million dollars to co-conspirator Stuart Norman.

It was further a part of said conspiracy that co-conspirator Stuart Norman would deliver said Treasury bills to the defendant Anthony Tavoularis and co-conspirator Joseph DiRienzo at Frank's Luncheonette, 1766 East New York Avenue, Brooklyn, New York.

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed the following overt acts:

One. On or about February 27, 1970, in the Eastern District of New York, the defendant Anthony Tavoularis and Joseph DiRienzo had a conversation.

Two. On or about February 28, 1970, within the

Eastern District of New York, Anthony Tavoularis and Joseph DiRienzo met at 1766 East New York Avenue, in Brooklyn.

Three. On or about February 28, 1970, within the Eastern District of New York, Vincent Poerio and Stuart Norman had a meeting.

Four. On or about February 28, 1970, within the Eastern District of New York, Anthony Tavoularis, Melvin Berman and Stuart Norman had a meeting.

Five. On or about March 4, 1970, within the Eastern District of New York, Vincent Poerio and Stuart Norman had a meeting.

Six. On or about March 4, 1970, within the Eastern Distridt of New York, Anthony Tavoularis, Stuart Norman and Joseph DiRienzo met at 1766 East New York Avenue, in Brooklyn.

All in violation of Title 18, United States Code Section 371.

Now, there are three different provisions of the statute which are referred to in that portion of the indictment. The last one is Title 18, United States Code, Section 371. The prior references were Title 18, United States Code, Section 2113(b) and 2113(c).

I am going to hold the reading of 2113(b) and 2113(c) until I get to the substantive count, which is Count Two of the indictment and will read those sections to you and explain it to you briefly. At the moment I will just read to you Title 18, United States Code, Section 371, which is the conspiracy section of the Code.

It provides: If two or more persons conspire to commit any offense against the United States and one or more of such persons does any act to effect the objects of the conspiracy, each is guilty of an offense against the United States.

Four essential elements are required to be proved in order to establish the offense of conspiracy charged in the indictment:

One, that the conspiracy described in the indictment was wilfully formed and was existing at or about the time alleged;

Two, that the accused wilfully became a member or members of the conspiracy;

Three, that one of the conspirators thereafter, knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged; and

Four, that such overt act was knowingly done in furtherance of some object or purpose of the conspiracy as charged.

(Continued on next page.)

JB:jm
T1amR2

Charge of the Court

If the jury should find beyond a reasonable doubt from the evidence of the case the existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete, and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

As stated before, the burden is always on the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Now, what is a conspiracy?

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose. So, a conspiracy is a kind of partnership in criminal purposes, in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard the law.

Mere similarity of conduct among various persons,

and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any expressed or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon were actually used or put into operation; nor that all of the persons charged to have been members of the alleged conspiracy were such. What the evidence in the

case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed, and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to affect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that two or more persons including one or more of the accused, were knowingly members of the conspiracy, as charged in the indictment.

In your consideration of the evidence in the case as to the offense of conspiracy charge, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you should next determine whether or not each of the accused willfully became a member of the conspiracy.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was willfully formed, and that a defendant lawfully became a member of the conspiracy either at its inception or afterwards, and that thereafter one or more of the conspirators committed one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a

conviction even though the conspirators may not have succeeded in accomplishing their common object or purpose and in fact may have failed so doing.

The extent of any defendant's participation, moreover, is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator even though he may have played only a minor part in the conspiracy.

An overt act is any act knowingly committed by one of the conspirators, in an effort to affect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, or driving an automobile, using a telephone. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme. It must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

Again, it is not necessary that all of the overt acts charged in the indictment were performed. One overt act is sufficient.

One may become a member of the conspiracy without full knowledge of all the details of the

conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find the defendants or any other person have become a member of the conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendants or other person who are claimed to have been members, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate willfully means to act or participate voluntarily or intentionally and with specific intent to do something the law forbids. That is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of the plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant, a conspirator.

One who willfully joins in an existing conspiracy is charged with the same responsibility as

if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and declarations of all the alleged participants. However, in determining whether a particular defendant was a member of a conspiracy, if any, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of the its members.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of court, by one person, may not be considered as evidence against any person who is not present and did not hear the statement made, or see the act done.

Thereafter, statements of any conspirator, which are not in furtherance of the conspiracy, or made before its existence, or after its termination, may be considered as evidence only against the person making it.

Now, the dates of the formation and the termination of the conspiracy are the dates referred to in the indictment. That is, on or about and between October 14, 1969 and the 4th day of March, 1970.

Persons can be involved in a conspiracy even though they do not know all other members of the conspiracy or participate in each phase of the conspiracy. If there is knowledge by the defendant that he is a participant in a general plan to violate the law, such person may be regarded as an accredited member of the conspiracy.

It is not necessary that each conspirator join the conspiracy at its inception. One who joins an existing conspiracy takes it as it is, and is

accountable for the prior conduct of the co-conspirators done in furtherance of the conspiracy.

Moreover, he is liable for the acts of his co-conspirators though he was not aware of the performance of those acts, nor even of the existence of the actors.

A co-conspirator who joins the conspiracy after its inception adopts all prior actions done in furtherance of the conspiracy, including declarations of other co-conspirators.

The indictment charges a conspiracy among the defendants Tavoularis, Poerio and Daniels, and Messrs. DiRienzo, Norman and Berman, all of whom are named in the indictment as co-conspirators. A person cannot conspire with himself, and, therefore, you cannot find any of the defendants guilty unless you find beyond a reasonable doubt that he participated in the conspiracy as charged with at least one other person. With this qualification you may find all of the defendants guilty or some of the defendants guilty and some not guilty, or all not guilty, all in accordance with these instructions and the facts which you find.

It is charged in Count Two of the indictment

that on or about and between the 27th day of February, 1970 and 4th day of March, 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant Anthony Tavoularis, the defendant Vincent Poerio and the defendant Louis Daniels, did willfully, unlawfully and knowingly possess United States Treasury bills, valued in excess of one hundred dollars, including but not limited to a United States Treasury bill in the face amount of one hundred thousand dollars bearing serial number 1017965A, which United States Treasury bill had been taken and carried away, with intent to steal and purloin from the Morgan Guaranty Trust Company, 23 Wall Street, New York, New York, while the aforesaid United States Treasury bills were in the care, custody and control and management of the aforesaid Morgan Guaranty Trust Company, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, the defendant Anthony Tavoularis and the defendant Vincent Poerio and the defendant Louis Daniels, knowing that the aforesaid United States Treasury bills had been taken from a bank, in violation of Section 2113 (b).

All in violation of Title 18, U.S. Code,

Section 2113 (c) and Title 18, U.S. Code, Section 2.

Now, I told you I would read you Title 18, 2113 (c) and Title 18, 2113 (b). The first of them, Title 18, U.S. Code, Section 2113 (c) provides in pertinent part: That whoever receives, possesses, conceals, stores, barters, sells or disposes of any property or money or thing of value, knowing the same to have been taken from a bank, in violation of Sub-section B of this Section, shall be in violation of the law.

Now, Subsection B, which is referred to in the indictment and in the section which I just read, and which describes what is meant by the phrase "taken from a bank" and Subsection C, reads:

Whoever takes and carries away with intent to steal or purloin any property or money or any other thing of value exceeding one hundred dollars, belonging to or in the care, custody and control and management or possession of any bank, shall be in violation of the law.

Now, the essential elements of the crime charged in Count Two of the indictment -- and I ask you to listen to these carefully -- are as follows:

One, that the defendants possessed United States Treasury bills.

Two, that such United States Treasury bills exceeded in value one hundred dollars.

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3. That such possession was done knowingly and intentionally.

4. That the United States Treasury bill or bills had been taken and carried away with intent to steal or purloin from the care, custody, control and management of a bank, and

5. That at the time of possession, the defendants knew that such property or money or other thing in value had been so taken from a bank.

6. At the time the bills were stolen, they were in the care, custody and control and management of the Morgan Guaranty Trust Company of New York.

The final element, that said bank must have been a member of the Federal Deposit Insurance Corporation has been stipulated or agreed to by the parties.

The burden is always upon the prosecution to prove beyond reasonable doubt every essential element of the crime charged.

As to the fourth and fifth elements of the crime, it is not necessary for you to find that the defendants participated in the taking away or theft in any way, or that they knew that the person from whom they received the bills had participated in the theft. It is also unnecessary for you to find that these defendants, or any

person from whom they received the bills, knew the particular bank from which the money was taken, or whether it was a bank insured by the Federal Deposit Insurance Corporation.

Circumstantial evidence may be sufficient to prove that the defendants knew that the bills were stolen from a bank.

It is not necessary that the Government prove the bills were property of or belonging to Morgan Guaranty. The Government must only prove that the bills were in the care, custody, control or management of the said bank at the time of their taking.

As used in the criminal statute in this case, the term bank means any member of the Federal Reserve System, any bank, banking association, trust company, savings bank, or any banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation. As I have instructed you, the deposits of the Morgan Guaranty Trust, New York City, a company, were so insured in October, 1969, and continue to be so insured.

Possession of the fruits of crime, recently after its commission, justifies the inference that the posses-

sion is guilty possession, and though only prima facie evidence of guilt, may be of controlling weight unless explained by the circumstances, or accounted for in some way consistent with innocence.

During the course of this trial you have heard testimony by Government witnesses concerning the identification of the defendants. There is no rule of law, however, that requires an identification to be positive beyond any shadow of doubt. The sufficiency of identification is for you, the jury.

Testimony by a witness that a defendant resembles or looks like the person the witness observed may be sufficient when considered with other evidence.

But, like everything else, it must be proved to your satisfaction beyond a reasonable doubt.

Now, you heard a reference at the end of Title 18, the Second Count of the Indictment, Title 18, United States Code, Section 2. That is the so-called aiding and abetting section of the statute, and it applies to Count Two of the Indictment, and I will read it to you:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which

is directly performed by him or another would be an offense against the United States, is punishable as a principal.

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

In other words, every person who willfully participates in the commission of a crime may be found guilty of that offense. Participation is willful is done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to further do something the law requires to be done; that is to say, with bad purpose, either to disobey or to disregard the law.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it, as he would in something he wishes to bring about; that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is willfully done if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the

specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

Mere presence at the scene of the crime, and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant, and not merely a knowing spectator.

An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident, or other innocent reason.

The purpose of adding the word knowingly was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

As stated before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt before there can be a convic-

tion.

An act is done willfully if done voluntarily and intentionally, and with the specific intent to do something the law forbids, that is to say, with bad purpose either to disobey or to disregard the law.

Knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by a defendant, and all other facts and circumstances in evidence, which indicate his state of mind. It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Now, on the question of possession, the law recognizes two kinds of possession: Actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then

in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as approved.

The Court may take judicial notice of certain facts or events. When the Court declares it will take a judicial notice of some fact or event, you may accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed, but you are not required to do so, since you are the sole judge of the facts.

Unless you are otherwise instructed, the evidence in the case always consists of the Sworn testimony of the witnesses, regardless of who may have called them; and all Exhibits received in evidence, regardless of who may have produced them, and all facts which may have been

admitted or stipulated; and all facts and events which may have been judicially noticed; and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross-examination, as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in the case, and your verdict is to be based on the evidence only. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt, and inconsistent with every reasonable hypothesis of innocence, or that there must be no reasonable doubt as to each chain of proof. The drawing of inferences is the proper function of you, the jury. The process of drawing inferences is to be drawn by human experience. The jury is not limited to drawing only those inferences most favorable to the accused, but must weight the inferences both favorable and unfavorable of the accused, to see if the evidence points to the guilt or innocence, bearing in mind only that the Government has the burden of proving a defendant's guilt beyond a reasonable doubt on your consideration of all of the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

You will note that the indictment charges that the offenses were charged on or about certain dates. The Government need not prove with certainty the exact date of the alleged offenses. It is sufficient that the evidence in the case establish beyond a reasonable doubt that the offenses were committed on dates reason-

ably near the dates alleged.

Evidence relating to any statement or act or omission claimed to have been made or done by a defendant outside of court, and after a crime has been committed should always be considered with caution, and weighed with great care, and all such evidence should be disregarded entirely unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement, act or omission was knowingly made or done.

A statement or act or omission is knowingly made or done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties, or where the witness' testimony would be merely cumulative.

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

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You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witnesshas testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witnesses' ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters.

Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction

may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest or by prejudice against a defendant.

An accomplice is one who unites with another person in the commission of a crime voluntarily and with common intent.

An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an

accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe that unsupported testimony beyond a reasonable doubt.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars; and you may reject all the testimony of that witness or give it such

credibility as you may think it deserves.

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses. Witnesses who, by education and experience, have become

expert in some art, science, profession or calling, may state their opinions as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider the fingerprint expert's opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that opinion of the expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

It is the duty of the attorneys on each side of the case to object when the other side offers testimony or whether evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are

the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely, and may draw no inference from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any queation.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So if the evidence in the case convinces you beyond reasonable doubt of the guilt of the accused, you should so find, even though you may believe one or more other persons are guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with

one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself but do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon returning to the jury room, the juror

closest to my left here, being Juror No. 1, will act as your foreman unless that juror is of the mind not to do so, and you will select one of your members to act as your foreman.

The foreman will preside over your deliberations, and will be your spokesman here in court.

Remember at all times you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

You are expected to use your good sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge and your natural tendencies and inclinations.

You must render a verdict with respect to each of the two counts of the indictment and you must render a verdict with respect to each of the defendants.

It is your duty to give separate and personal consideration in the case of each individual defendant.

When you do so, you should analyze what the

evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined from the evidence as to his own acts and conduct and any other evidence in the case which may be applicable to him.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a Deputy Marshal signed by your forelady or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other then a signed writing and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing. or orally in open court.

You will note from the oath about to be taken by the Deputy Marshals that they, too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to

reveal to any person - not even to the Court - how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached a unanimous verdict.

Now, ladies and gentlemen, that is the charge on the law.

What I am going to do is ask you to step in the other room for about five or ten minutes while I discuss one or two points with counsel in the case.

I instruct you not to start your deliberations until after I have asked you to come back and have given you your final go ahead.

I realize at this point you are very anxious to go ahead and start deliberating, but wait five or ten minutes until I have had a chance to discuss matters with counsel.

I will call you back shortly.

The Deputy Marshals will be sworn and the alternate jurors will be discharged and the twelve of you will be sitting in the box and you will begin your deliberations then, but do not discuss the case in the meanwhile.

(The jury withdrew from the courtroom at 11:05a.m.)

(The following out of the hearing of the jury:)

THE COURT: All right, Mr. Dougherty.

MR. DOUGHERTY: I am satisfied with the charge, your Honor. I have no comment on it.

MR. NEWMAN: If your Honor pleases, with your permission may I make exceptions first?

THE COURT: In any order that you wish.

MR. NEWMAN: I have two exceptions to the charge and I would also like permission rather than restating after my co-counsel, to join in their exceptions.

My two exceptions are: I object to that part of the charge on the part of the defendant Tavoularis to the use of recent possession and presumption of recent possession based on the arguments previously presented to the Court on the motion to dismiss and on the end of the Government's case.

THE COURT: I understand.

MR. NEWMAN: I also obect to that portion of the charge wherein your Honor was talking about prior contradictory statements and you indicated they may not be established, may not be used to establish the

truth of that original statement.

I except to that because I offered statements which, under Desisto, are entitled to recognition for the truth of their contents.

THE COURT: You want -- you did offer inconsistent statements on your case and you want it as to that?

I will tell the jury that that portion of the charge does not apply to anything affirmatively, if you wish.

I thought it was clear from the wording of the charge, but I will make it clear.

MR. NEWMAN: I have two additional requests: One request is, I request on behalf of the defendant Tavoularis a multiple conspiracy charge, if they find there was more than one conspiracy. they must acquit.

MR. DOUGHERTY: I would object to that.

THE COURT: I think I expressed myself on that subject. I have not changed my mind on that.

MR. NEWMAN: I also respectfully request, which was not a portion of your charge, but vis-a-vis the tapes in a different position cannot be read back and your Honor indicatedit had to be played back

here in the courtroom if they want to hear it. It would be played back here rather than taking it in with them.

THE COURT: I will say again on that exhibit, the transcript of the tapes, I will give them an ddditional charge on that.

MR. NEWMAN: Thank you, sir.

MR. LIGHT: I join in the objections of co-counsel on behalf of Mr. Poerio and I would like to object to the reference of the first count. You defineconspiracy. You explain to the jury that it has to be wilful and he has to join involuntarily and intentionally and for fifteen minutes you define conspiracy and never once until the very end did you tell the jury if they do not find that the defendant joined involuntarily, they could acquit him, if they do not find he voluntarily entered into it.

You made reference referemce they could convict him with this and convict him with that and convict him with this and only at the very end did your Honor say when the defendant cannot be found guilty of a conspirary if he conspired with himself and that was the only time you mentioned it.

It was always in reference to find a conviction rather than say the converse.

THE COURT: I understand your objection. The text of that conspiracy charge is taken from the standard textbook on charges to a jury in federal criminal cases, and I won't alter it.

MR. CHREIN: I have one request and one exception, if I may.

The request deals with the fact when you read the elements of the conspiracy count, I do not believe I heard you instruct the jury that the conspiracy must be to violate 2113(c). You instructed them it must be a conspirary to violate the law.

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THE COURT: I will say it must be a conspiracy to violate 2113(c), which I read.

MR. CHREIN: Yes.

I have but one exception. And that is when your Honor gave instructions on the ability of both sides to comment on the failure to call a witness. I don't believe in view of the developments yesterday that that instruction was relevant because I don't believe either side did make such a comment, and also in view of the fact that the mysterious Mr. Berman was in fact here for whatever he was worth,

But I feel that might reflect on the failure of the defendants to take the stand.

THE COURT: I instructed the jury --

MR. CHREIN: I realize your Honor fully instructed them.

THE COURT: I take it -- I certainly understood that the parties -- Mr. Newman, in his summation, commented on the prosecution's failure to call certain witnesses. Of course, the way is always open for a defendant to subpoena those witnesses. And, as I have said in my charge, the law doesn't impose any duty on the defendants to

to call any witnesses. I don't know of any failure --

MR. CHREIN: If any comment was made by my colleagues, I will withdraw the objection. But it is my own recollection, which doesn't necessarily govern, that no such comment was made.

MR. NEWMAN: Since my colleague is abandoning me so quickly, your Honor, may the record indicate that as far as I was concerned, I made no such comment except in the format of ex!ert witnesses having to do with the tape, or to rebut witnesses that I !ut on the stand. That's my recollection of how I used it. And, therefore, I would join in Mr. Chrein's and Mr. Light's objections and exceptions.

THE COURT: You already have.

All right. I will give these three clarifications that I indicated I would.

Will you bring back the jury.

(Whereupon the jury entered the courtroom.)

THE COURT: Now, ladies and gentlemen of the jury, I have been asked to make one or two clarifications, which I will do.

I gave you an instruction with respect to the use of earlier contradictory statements, which I believe were read. The earlier contradictory state-

ments are admissible only to impeach the credibility of the witness and not to establish the truth of those statements. That is true in cases where the earlier contradictory statements are read to a witness, for example, in cross-examination and saying, "Do you recall having said that?"

Defense counsel pointed out that in their case they read a few statements which they claim contradicted one or more witnesses to you in the course of their presentation of their case. That rule does not apply to those statements. They may be used by you to establish the truth of those statements as distinguished from statements read on cross-examination.

The second clarification is, I said that I would not send the exhibits in with you initially when you begin your deliberations. But as I indicated in the charge, you may have any or all of them as you wish and request them. The same is true as indicated to you by counsel in their summation. You may have any portion of any witness's testimony read to you -- reread, if you wish to have it reread, and you may have the tape, if you wish, replayed to you here in the courtroom. If you

wish to have it done.

If you do wish any of those, you should prepare a little note through your foreman and send it to me through one of the Deputy Marshals.

The third question is, I was asked to clarify that the conspirary - the elements of the conspiracy - there is some question as to whether you understand that the conspirary must be in violation of Section 2113, either (c) and (b), as I read them to you.

In other words, the conspiracy must have been formed for an unlawful purpose and must have been formed for the purpose of violating those sections of the code as is charged in the indictment.

I am sure you understand that. But I said I would repeat it to you to make sure you do understand.

All right, now, the four alternates are discharged with the thanks of the Court. And your patience and attention to the facts here over these many days - and it is a very valuable service that you perform - and, indeed, in the last three or four cases that have been tried in this courtroom, we have had to use one, if not two, of the alternates. In

this case, for some reason your fellow jurors are very healthy and in good spirits and have survived the rigors of the ordeal. So you are discharged with the thanks of the Court. You may go back to the central jury room.

THE CLERK: Take the cards downstairs and please !ick u! your things.

(The four alternate jurors were discharged.)

THE COURT: Now, will you swear in the marshals.

THE CLERK: Yes. Will the marshals step forward, please.

(Two Deputy Marshals were sworn by the Clerk of the Court.)

THE COURT: Now, ladies and gentlemen, before the marshals take you out, it is now 11:15. One of the things -- when it gets to about twelve o'clock -- that you should determine is whether you wish to go out for lunch or whether you wish to have lunch sent in.

If you wish to have lunch sent in, you should tell the Deputy Marshal, or if you wish to go out, you must tell the Deputy Marshal. If you want lunch sent in, he will take the order from you

and lunch will then arrive about one o'clock or so. If not, you will be taken out about one o'clock, depending on what you choose to do.

I plan to let the attorneys go to lunch between approximately one and two. So that if you are still deliberating, then bear that in mind. And, Madam Forelady, you can keep an eye on the clock and decide when best to do this. But keep that in mind because the attorneys will not be available for your request, or what have you, between those hours of one and two.

So you should proceed now and begin your deliberations. Thank you.

CERTIFICATE OF SERVICE

March 10, 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York.

Sheila Gross